

**HOUSE BILL NO. 323**  
**SUMMARY OF KEY POINTS**

EXHIBIT 2  
DATE 1/31/87  
HB 323

A. BACKGROUND: The right to control funeral arrangements and manner of disposition (the "Right of Disposition") is a significant issue for families and funeral professionals. Over 40 states now have statutes in place to address issues and problems in this area.

B. ISSUES AND PROBLEMS WITH THE RIGHT OF DISPOSITION:

1. Decedent's Control: Granting the decedent some method to arrange binding funeral arrangements and control the manner of disposition.
2. Ascertaining Decedent's Wishes: Establishing a reliable and precise method for determining what the decedent's wishes are.
3. Delineating Precisely Who Possesses Right of Disposition: Setting out a detailed priority list of who may exercise the right of disposition.
4. Majority Control and Missing Relatives: Instituting methods to resolve disputes by majority vote of those relatives that can be located.
5. Acknowledging the Needs of Survivors: Allowing surviving family members an opportunity to memorialize the decedent.
6. When is the Right of Disposition Forfeited: Establishing criteria for taking the right of disposition away from those who criminally cause the death, those who fail to exercise the right, spouses who are divorcing and estranged relatives.
7. Resolving Disputes: Designating which court resolves disputes, who has standing to seek the court's intervention, the factors a court should use in resolving disputes, and the right of a mortician to maintain the status quo while the dispute is resolved.
8. Reliance and Immunity: Addressing under what circumstances morticians may rely upon family members and granting immunity if the mortician does so rely in good faith.

C. CLARIFICATION OF DEFINITIONS IN 37-19-101:

1. "Arrangements": To make clear that those who are in the business of meeting with Montana families to arrange funerals and/or the disposition of deceased human remains hold the requisite licensing mandated by Montana law and are accountable to the State Board.
2. "Funeral Directing": To clarify the activities that only a licensed individual or business may perform in the care, memorialization and disposition of deceased human remains.
3. "Exemptions": To recognize that the funeral licensing requirements do not prevent or interfere with the right of immediate family members or clergy to memorialize the deceased nor the normal and routine activities of cemeteries and crematories.

*Prepared by Scott Gilligan for the Montana Funeral Directors Association*